

Message Text

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PAGE 01 LUXEMB 00670 301410Z

ACTION CPR-01

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FM AMEMBASSY LUXEMBOURG

TO SECSTATE WASHDC 5902

UNCLAS LUXEMBOURG 0670

FOR PROTOCOL

E.O. 11652: NA

TAGS: PDIP, LU

SUBJ: HOST COUNTRY REQUIREMENTS FOR AUTOMOBILE LIABILITY
INSURANCE

REF: STATE 189095

EMBASSY LUXEMBOURG RESPONSE TO REFTEL QUESTIONNAIRE FOLLOWS:

A. YES.

B. LAW REQUIRES UNLIMITED COVERAGE FOR TRAFFIC ACCIDENT LIABILITY
BUT PERMITS LIMITATION OF LIABILITY TO AN AMOUNT OF DOLS 1.3 MILLION
PER ACCIDENT FOR DAMAGE CAUSED TO MATERIAL IF IT IS DUE TO FIRE,
PROJECTION OF FLAMES OR EXPLOSION. REQUIREMENTSIS ENFORCED AGAINST
DIPLOMATS BY WAY OF REFUSAL OF DELIVERY OF A LICENSE PLATE. EVIDENCE
OF EXISTENCE OF AN INSURANCE CONTRACT MUST BE BROUGHT BEFORE A
LICENSE PLATE IS DELIVERED. THIS LEGAL REQUIREMENT IS APPLICABLE
TO ALL, NOT ONLY TO DIPLOMATIC PERSONNEL.

NOTE: UNLIMITED COVERAGE MEANS THAT THE INJURED PARTY RECEIVES
DAMAGES IN FULL FROM THE INSURER. INSURER MAY, HOWEVER, CLAIM BACK
FROM INSURED PERSON A SUM OF ABOUT DOLS 70, UNLESS THE INSURANCE
CONTRACT INCLUDES LEGAL DEFENSE CLAUSE WHICH IS STANDARD BUT
NOT LEGALLY REQUIRED.

D. NOT APPLICABLE.

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PAGE 02 LUXEMB 00670 301410Z

E. LOCAL LAW PROVIDES FOR DIRECT LEGAL ACTION AGAINST INSURER.
LUXEMBOURG IS NOT RPT NOT A PARTY TO THE EUROPEAN CONVENTION ON
COMPULSORY INSURANCE AGAINST CIVIL LIABILITY WITH RESPECT TO
MOTOR VEHICLES. ARTICLE 7, PARA 2 OF ANNEX I TO THE CONVENTION
IS NEVERTHELESS REFLECTED IN LOCAL LAW OF APRIL 7, 1976, ARTICLE II
WHICH STATES THAT: "THE INSURER MAY MAKE THE ASSURED A PARTY TO
AN ACTION BROUGHTAGAINST HIM BY THE INJURED PARTY." THIS LOCAL

LAW IS BASED ON A BENELUX CONVENTION. ABSENT WAIVER OF IMMUNITY IT WOULD SUFFICE THAT THE INSURER SUMMONS THE ASSURED TO BECOME A PARTY TO THE ACTION. FAILURE TO THE ASSURED TO COMPLY WOULD RESULT IN MAKING THE COURT DECISION OPPOSED TO THE ASSURED. IN PRACTICE INSURERS OF HOST COUNTRY DO NOT SUMMON ASSURED DIPLOMATS TO BECOME A PARTY TO AN ACTION. EVEN CITIZENS OF HOST COUNTRY ARE NOT SUMMONED, AS A RULE, DUE TO A JURISPRUDENCE DATING BACK TO 1932.

F. INSURANCE COMPANY CANNOT DEFEND ON GROUND THAT INSURED HAS VIOLATED A CONTRACT TERM. HOWEVER, INSURER MIGHT IN THEORY BRING A CASE AGAINST THE INSURED AT A LATER STAGE CLAIMING DAMAGES FOR HIS REFUSAL TO COOPERATE, IF IT WERE THAT SUCH COOPERATION WOULD HAVE RESULTED IN AVOIDING PAYMENT IN TOTAL OR IN PART TO THE INJURED PARTY. HOWEVER, IT IS THE OPINION OF LOCAL LAWYER THAT IT WOULD BE EXTREMELY DIFFICULT FOR THE INSURER TO SUCCEED IN SUCH ACTION.

G. WHERE THERE IS NO PERSONAL INJURY, BUT MATERIAL DAMAGES ONLY, SETTLEMENTS ARE USUALLY REACHED OUT OF COURT. IN THE CASE OF PERSONAL INJURY, SETTLEMENT OUTSIDE COURT IS ALSO FREQUENT. IF COURT HAS TO DECIDE, IT IS A MATTER OF AGREEMENT BETWEEN INSURER AND ASSURED DIPLOMAT TO DECIDE AS TO THE COMMENDABILITY OF WAIVER OF IMMUNITY AND THIS WAIVER WOULD CONCERN CIVIL LIABILITY ONLY. DUE TO SMALL NUMBER OF DIPLOMATS IN LUXEMBOURG NO STANDARD PRACTICE HAS EVOLVED WHETHER TO WAIVE OR NOT WAIVE A DIPLOMAT'S IMMUNITY.

UNCLASSIFIED

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PAGE 03 LUXEMB 00670 301410Z

CONSIDERING THE ANSWERS GIVEN UNDER E AND F ABOVE, A CASE COULD HARDLY EVER ARISE WHERE WAIVER OF IMMUNITY COULD BE ASKED FOR BY INSURER OR WOULD BE CONSIDERED BY THE INSURED DIPLOMAT.

#. NO. TO DATE, HOWEVER, ALL DIPLOMATIC PERSONNEL INCLUDING MEMBERS OF ADMINISTRATIVE AND TECHNICAL STAFF HAVE ALWAYS BEEN ABLE TO OBTAIN AUTO LIABILITY INSURANCE. GOL PROVIDES NO ASSISTANCE BEYOND INVITING INSURERS NOT TO REFUSE ANYONE WISHING TO OBTAIN INSURANCE.

I. NO. LESS BY FIVE PERCENT TAX WHICH DIPLOMATIC AND MEMBERS OF ADMINISTRATIVE AND TECHNICAL STAFF DO NOT PAY.

J. NO, SAME STANDARD CONTRACT.

K. NO.

L. IF DIPLOMAT CAUSES ACCIDENT LIABILITY INSURANCE COVERAGE IS NOT LIMITED.

M. YES.

NO. NO. HOWEVER, PERSONAL INJURY IS COMPENSATED BY AN INTER-
PROFESSIONAL ORGANIZATION OF INSURERS IF THE PERSON CAUSING THE
DAMAGE HAPPENED NOT TO HAVE INSURANCE COVERAGE, WHETHER THE
PERSON CAUSING THE DAMAGE IS OR IS NOT A DIPLOMAT. PHILLIPS

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